

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

LINDELL DROP FORGE COMPANY

and

Case 7-CA-29942

LOCAL LODGE DS-60, DISTRICT  
LODGE 117, INTERNATIONAL  
ASSOCIATION OF MACHINISTS AND  
AEROSPACE WORKERS, AFL-CIO-CLC

*March 19/1991*  
DECISION AND ORDER

*By Members Klemmery, Devitt, and Rauda Vaughn*  
Upon a charge filed by the Union on November 20, 1989, and an amended

charge filed on December 22, 1989, the General Counsel of the National Labor Relations Board issued a complaint on January 3, 1990, and an amended complaint on March 9, 1990, against Lindell Drop Forge, the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. Although properly served copies of the charges and complaints, the Respondent has failed to file an answer.<sup>1</sup>

On December 21, 1990, the General Counsel filed a Motion for Summary Judgment. On December 26, 1990, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not

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<sup>1</sup> On February 2, 1990, the Regional Office was advised by the Respondent's counsel that the Respondent had filed for chapter 7 bankruptcy, that an interim trustee in bankruptcy had been appointed, and that the trustee would thereafter respond to the Board's inquiries concerning the Respondent. On May 9, 1990, the Regional Office received an answer to the amended complaint from Jack Rachman, chapter 7 bankruptcy trustee of the Respondent. On June 22, 1990, the chapter 7 bankruptcy trustee, by letter from his counsel, withdrew the May 9, 1990 answer to the amended complaint. No further answer has been received.

be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

#### Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The amended complaint states that unless an answer is filed within 14 days of service, "all of the allegations in the Amended Complaint shall be deemed to be admitted true and may be so found by the Board." Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Regional attorney for Region 7, by letters dated January 29, February 6, and March 28, 1990, notified the Respondent, and its bankruptcy trustee, that unless an answer was received immediately, a Motion for Summary Judgment would be filed. On May 9, 1990, the bankruptcy trustee filed an answer but that answer was withdrawn on June 22, 1990.

In view of the trustee's withdrawal of the answer and in the absence of good cause being shown for the Respondent's failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

#### Findings of Fact

##### I. Jurisdiction

The Respondent, a Michigan corporation, is engaged in the manufacture, nonretail sale, and distribution of forgings and related products at its facility in Lansing, Michigan. During the year ending December 31, 1988, which period is representative of its operations during all times material,

Respondent, in the course and conduct of its business operations, manufactured, sold, and distributed from its Lansing, Michigan plant, products valued in excess of \$50,000, which were shipped from the plant directly to points located outside the State of Michigan. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

## II. Alleged Unfair Labor Practices

The following employees of the Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of the Act:

All die department employees, including planer operators, turning impression operators, impression die sinkers, trimmer die sinkers, turning repression die sinkers, die inspectors, die polishers, group leaders, journeymen, apprentices and helpers, employed by Respondent at its Lansing plant as described in the collective bargaining agreement in effect; but excluding office clerical employees, employees represented by other labor organizations, and guards and supervisors as defined in the Act.

At all material times, the Union has been the designated collective-bargaining representative of the employees in the unit and has been recognized as the representative by the Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective from August 29, 1989, through August 10, 1992. By virtue of Section 9(a) of the Act, the Union is the exclusive representative of the employees in the bargaining unit for the purposes of collective bargaining concerning rates of pay, wages, hours of employment, and other terms and conditions of employment.

Since on or about October 19, 1989, and continuing to date, despite requests by the Union, the Respondent has failed and refused to make vacation payments to unit employees as required by article II of Appendix A of the collective-bargaining agreement. Also since on or about November 1989 and

continuing through January 1990, despite requests by the Union, the Respondent has failed and refused to provide unit employees with life, medical, and dental insurance for the 3 months following layoff as required by paragraph 9 of article VI of Appendix A of the collective-bargaining agreement.

By these acts and conduct, the Respondent has engaged in, and is engaging in, unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

#### Conclusions of Law

By failing and refusing to remit to unit employees vacation pay and other required fringe benefit contributions including life, medical, and dental insurance required by the terms of the collective-bargaining agreement, despite requests by the Union, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

#### Remedy

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

We shall order the Respondent to cease unilaterally voiding or changing contract provisions or established employment conditions or refusing to bargain with the Union as the exclusive collective-bargaining representative of employees in the unit. We also shall order the Respondent to remit to unit employees vacation pay and to make to the benefit funds on the employees' behalf other required fringe benefit contributions including life, medical, and dental insurance required by the terms of the 1989--1992 collective-

bargaining agreement,<sup>2</sup> and we shall order the Respondent to make whole and reimburse unit employees for any expenses ensuing from its failure to make those payments as set forth in Kraft Plumbing & Heating, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), with interest as computed in New Horizons for the Retarded, 283 NLRB 1173 (1987).

## ORDER

The National Labor Relations Board orders that the Respondent, Lindell Drop Forge Company, Lansing, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Unilaterally voiding or changing contract provisions or established employment conditions or refusing to bargain with the Union as the exclusive bargaining representative of employees in the unit.

(b) Failing and refusing to remit to unit employees vacation pay and to make on unit employees' behalf other required fringe benefit contributions including life, medical, and dental insurance as required by the terms of the 1989--1992 collective-bargaining agreement.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

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<sup>2</sup> Because the provisions of employee benefit fund agreements are variable and complex, we leave to the compliance stage the question of whether the Respondent must pay any additional amounts into the benefit funds in order to satisfy our "'make whole'" remedy. Merryweather Optical Co., 240 NLRB 1213 (1979).

(a) Remit to its unit employees vacation pay and make to the fringe benefit funds on the unit employees' behalf other fringe-benefit contributions including life, medical, and dental insurance as required under the 1989--1992 collective-bargaining agreement. The unit is:

All die department employees, including planer operators, turning impression operators, impression die sinkers, trimmer die sinkers, turning repression die sinkers, die inspectors, die polishers, group leaders, journeymen, apprentices and helpers, employed by Respondent at its Lansing plant as described in the collective bargaining agreement in effect; but excluding office clerical employees, employees represented by other labor organizations, and guards and supervisors as defined in the Act.

(b) Make whole and reimburse unit employees for any expenses ensuing from its failure to make the required payments as provided in the remedy portion of this decision.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of payments due under the terms of this Order.

(d) Mail to the unit employees employed as of the time of the Respondent's unfair labor practices, copies of the attached notice marked "'Appendix.'"<sup>3</sup> Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be mailed by the Respondent immediately upon receipt as directed above.

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<sup>3</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "'POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD'" shall read "'POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.'"







APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the  
National Labor Relations Board  
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT unilaterally void or change contract provisions or established employment conditions or refuse to bargain with the Union as the exclusive bargaining representative of employees in the unit.

WE WILL NOT refuse to remit to unit employees vacation pay and to make on the employees' behalf other fringe benefit contributions including life, medical, and dental insurance as required by the terms of the 1989--1992 collective-bargaining agreement.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL remit to unit employees vacation pay and make to the fringe benefit funds on behalf of the employees other fringe benefit contributions including life, medical, and dental insurance as required in the 1989--1992 collective-bargaining agreement. The unit is:

All die department employees, including planer operators, turning impression operators, impression die sinkers, trimmer die sinkers, turning repression die sinkers, die inspectors, die polishers, group leaders, journeymen, apprentices and helpers, employed by us at our Lansing plant as described in the collective bargaining agreement in effect; but excluding office clerical employees, employees represented by other labor organizations, and guards and supervisors as defined in the Act.

WE WILL make whole and reimburse unit employees for any expenses ensuing from our failure to make the required payments with interest.

LINDELL DROP FORGE COMPANY

\_\_\_\_\_  
(Employer)

Dated \_\_\_\_\_ By \_\_\_\_\_  
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 477 Michigan Avenue, Room 300, Detroit, Michigan 48226-2569, Telephone 313--226--3219.